

154 FERC ¶ 61,212
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Woodland Pulp LLC

Project No. 2660-027

ORDER DENYING REHEARING

(Issued March 17, 2016)

1. On November 23, 2015, the Director of the Office of Energy Projects issued a new license to Woodland Pulp LLC (Woodland Pulp) under sections 4(e) and 15 of the Federal Power Act (FPA) for the continued operation and maintenance of the Forest City Project No. 2660 (Forest City Project).¹ The project is located on the East Branch of the St. Croix River in Washington and Aroostook Counties, Maine. On December 22, 2015, Woodland Pulp filed a request for rehearing.

2. For the reasons discussed below, we deny rehearing.

I. Background

3. The Commission issued the original license for the Forest City Project on August 27, 1980, which expired on August 31, 2000.² Since then, Woodland Pulp has operated the project under an annual license pending disposition of its new license application.

¹ *Woodland Pulp LLC*, 153 FERC ¶ 62,129 (2015).

² *Georgia Pacific Corp.*, 12 FERC ¶ 62,141 (1980). In 2001, the Commission approved the transfer of the license from Georgia-Pacific Corporation to Domtar Maine Corporation, and in 2009, approved the transfer of the license to Domtar Maine LLC. *Georgia-Pacific Corp.*, 97 FERC ¶ 62,078 (2001); *Domtar Maine Corp.*, 128 FERC ¶ 62,218 (2009). In 2010, Domtar Maine LLC notified the Commission that it had changed its name to Woodland Pulp LLC. For convenience, we refer to the licensee as Woodland Pulp throughout this order.

4. The Forest City Project is located at river mile 58 of the East Branch of the St. Croix River on the international boundary between the United States and Canada, with parts of the Forest City dam and impoundment in each country.³ The impoundment includes two natural lakes, North Lake and East Grand Lake, extending 19.5 miles and over 17,040 acres. The project, as licensed, includes only the lands, waters, and structures that are located in the United States, specifically a 147-foot-long section of the Forest City dam located at the outlet of East Grand Lake and 9,141 acres of the impoundment. The project boundary encloses approximately 9,148 acres, including the U.S. portion of the impoundment, and covers about 20 miles of the East Branch of the St. Croix River from the dam to North Lake.

5. The Forest City Project does not generate power. Rather, it is part of the St. Croix River storage system along with two other storage impoundments, the Vanceboro Project No. 2492 (Vanceboro Project) and West Branch Project No. 2618 (West Branch Project), all three of which operate in a seasonal store-and-release mode. During periods of high flows, the projects store water to reduce downstream flooding, and during periods of low flows, the projects release water to augment generation at Woodland Pulp's downstream unlicensed hydroelectric projects, the Grand Falls and Woodland Projects.⁴

6. The Forest City Project is subject to the Boundary Waters Treaty of 1909, which established the International Joint Commission (IJC), a bi-national agency with the mission of preventing and resolving disputes between the United States and Canada over boundary waters.⁵ IJC approval is required for new uses, obstructions, or diversions of boundary waters on either side of the boundary that would affect the natural level or flow of waters on the other side of the boundary.⁶ On October 15, 1965, the IJC issued an order approving the construction, maintenance, and operation of certain facilities at the

³ In this case, a river mile is the distance measured from the confluence of the East and West Branches of the St. Croix River. Typically, a river mile is the distance measured from the mouth of the river.

⁴ The Grand Falls and Woodland Projects do not require licensing because they operate pursuant to a valid pre-1920 permit. *Domtar Maine Corp., Inc. v. FERC*, 347 F.3d 304, 309 (D.C. Cir. 2003).

⁵ Treaty Between the United States and Great Britain Relating to Boundary Waters Between the United States and Canada, January 11, 1909, 36 Stat. 2448 (1909).

⁶ *Id.* at Article III.

Vanceboro Project (IJC Order).⁷ In addition to approving those facilities, the IJC Order included Condition 6, which requires the Forest City Project to discharge at least 75 cubic feet per second (cfs) from East Grand Lake and to maintain impoundment levels between 427.94 and 434.94 feet mean sea level (msl). The International St. Croix River Watershed Board monitors compliance with the IJC Order.

II. Relicensing Proceeding

7. On March 19, 2009, Woodland Pulp filed an application for a new license to continue to operate the Forest City Project.

8. In its license application, the licensee proposes to continue operating the Forest City Project in a store-and-release mode in accordance with the IJC Order and certain agreements, which it termed “soft” controls or voluntary targets, negotiated with Maine Department of Inland Fisheries and Wildlife (Maine DIFW), and project-area camp and property owners. The license application states that the soft controls should remain voluntary targets rather than mandatory requirements.⁸ These targets include:

- maintaining a normal maximum impoundment elevation of 434.24 feet msl at all times for flood control;
- fluctuating the impoundment no more than 1 foot from June 10 to July 15 to enhance smallmouth bass spawning, protect common loon nesting, and protect muskrat and beaver breeding; and
- maintaining the impoundment elevation at or above the preferred summer minimum of 431.94 feet msl from June 1 through September 10.

9. On February 3, 2010, the Department of the Interior (Interior) filed preliminary conditions, prescriptions, and recommendations pursuant to sections 4(e), 10(j), and 18 of the FPA for the West Branch and Forest City Projects.⁹ One of Interior’s 10(j) recommendations is to limit impoundment level fluctuations at the Forest City Project from May 15 to July 15 to not more than a 6-inch increase or a 1-foot decrease in order to

⁷ International Joint Commission October 15, 1965 Vanceboro Project Dam Order of Approval, <http://ijc.org/files/dockets/Docket%2080/Docket%2080%20Order%201965-10-15.pdf>.

⁸ License Application at B-11.

⁹ Commission staff issued a license for the West Branch Project on March 15, 2016. *Woodland Pulp LLC*, 154 FERC ¶ 62,175 (2016).

prevent the abandonment of common loon nests. On April 16, 2010, the licensee filed comments opposing this 10(j) recommendation and several of Interior's other proposed conditions, prescriptions, and recommendations.

10. On October 16, 2014, Commission staff issued a draft Environmental Assessment (EA) pursuant to the National Environmental Policy Act of 1969, analyzing the impacts of the proposed project and alternatives to it. The draft EA recommended adopting the impoundment level targets as license requirements and including Interior's recommended 10(j) measure to limit impoundment fluctuations. Woodland Pulp filed one comment on the draft EA, requesting that Commission staff analyze project retirement as an alternative to licensing.¹⁰ Woodland Pulp filed no comments on Commission staff's recommendations. On January 20, 2015, Commission staff issued a final EA, which recommended adopting the impoundment level targets as license conditions. Woodland Pulp did not file comments on the final EA.

11. On November 23, 2015, Commission staff issued a new license to Woodland Pulp, requiring the impoundment level targets. On December 22, 2015, Woodland Pulp filed a timely request for rehearing.

III. Discussion

12. On rehearing, Woodland Pulp objects to the new license because it alleges that the new license requires measures that will increase the project's operational costs to a significant degree, which may lead to surrender of the license. Specifically, Woodland Pulp requests that the Commission remove paragraphs (a), (c), and (e) of license Article 404, which concern impoundment levels; license Articles 405 and 406, which require plans for monitoring compliance and consulting with agencies regarding impoundment operation; and license Article 410, which requires a historic properties management plan. Woodland Pulp asserts that these requirements are unnecessarily burdensome and costly given the economics of the non-generating project.

13. As an initial matter, we note that all of Woodland Pulp's arguments, except those regarding impoundment level fluctuations in Article 404(c), are new arguments that could have been, but were not, raised in response to Commission staff's draft and final EA. Instead of commenting on the draft and final EA, Woodland Pulp waited until its request

¹⁰ Woodland Pulp November 26, 2014 Comments on the Draft EA at 1-2.

for rehearing to raise its arguments, at which point they were untimely.¹¹ Accordingly, those arguments have been waived. Even so, we discuss Woodland Pulp's arguments below, for clarity.

A. License Article 404(a)

14. Article 404(a) is consistent with the applicant's proposed project operation as described in its license application.¹² Article 404(a) requires the licensee to:

maintain a minimum impoundment elevation of 427.94 feet mean sea level (msl) and a normal maximum elevation of 434.24 feet msl except when storing water to reduce downstream flooding. When storing water to reduce downstream flooding, the maximum impoundment elevation is 434.94 feet msl.

15. Woodland Pulp argues on rehearing that Article 404(a) should be removed from the license because requiring a normal maximum impoundment of 434.24 feet msl conflicts with the IJC Order and the historic operation of the project. Woodland Pulp adds that while it voluntarily maintains a normal maximum impoundment elevation of 434.24 feet msl for flood control purposes, it should not be required to do so. Mandatory requirements, Woodland Pulp asserts, discourages it from entering into voluntary agreements related to project operation with agencies and property owners.

16. Article 404(a) does not conflict with the IJC Order or the historic operation of the project. Similar to Article 404(a), the IJC Order requires a minimum impoundment level of 427.94 feet msl and a maximum impoundment level of 434.94 feet msl. While the IJC Order does not require a normal maximum impoundment elevation, it does not preclude

¹¹ Our regulations allow us to reject new arguments raised on rehearing, unless we find that the argument could not have been previously presented, e.g., claims based on information that only recently became available or concerns prompted by a change in material circumstances. Rule 713(c)(3) of our Rules of Practice and Procedure states that any request for rehearing must "[s]et forth the matters relied upon by the party requesting rehearing, if rehearing is sought based on matters not available for consideration by the Commission at the time of the final decision or final order." 18 C.F.R. § 385.713(c)(3) (2015). *See also NO Gas Pipeline v. FERC*, 756 F.3d 764, 770 (D.C. Cir. 2014) (finding that a claim not raised before the Commission's issuance of the initial order is barred as untimely).

¹² License Application a B-14, Table B-2.

such a requirement. Regarding historic operation of the project, Woodland Pulp stated in a letter to the Commission that “[t]he project has . . . operated at a normal full level of 434.24 [feet msl] since 1960.”¹³

17. Therefore, we find no basis for giving Woodland Pulp the blanket authority it seeks to voluntarily comply with a normal operating regime. The Commission is bound by its statutory obligations under the FPA to balance power and non-power values and protect all aspects of the public interest to the greatest extent possible at each project. To the extent that Woodland Pulp elects to use the impoundment for hydroelectric purposes, it also becomes subject to the FPA’s requirements. It is standard practice for the Commission to meet its statutory obligations by establishing in a Commission license a normal operating regime that gives appropriate weight to all public interest considerations, including flood control, and a formal process for the Commission and the resource agencies to measure and ensure compliance.

B. License Article 404(c)

18. Article 404(c) requires the licensee to:

limit impoundment level fluctuations from May 15 to July 16
by not exceeding an increase of 6 inches or a decrease of
1 foot, as measured from the impoundment level established
on May 14, to prevent the abandonment of common loon
nests at the Forest City impoundment.

19. Woodland Pulp contends that the evidence in the record does not support Article 404(c)’s limits on impoundment level fluctuations. The company states that the record does not demonstrate poor nesting conditions for loons or breeding conditions for muskrat and beaver, but actually indicates that common loon and muskrats appear to successfully breed in the project area. Further, Woodland Pulp contests that the U.S. Fish and Wildlife Service study the EA cites to support Article 404(c), *Status Assessment and Conservation Plan of the Common Loon in North America* (FWS Study), is inapplicable because it does not consider the Forest City Project specifically or demonstrate that water level fluctuations at the project adversely affect loon nesting.

20. Woodland Pulp adds that Commission staff analyzed neither the potential labor costs incurred to adjust the project’s manually-operated gates to comply with this requirement nor the requirement’s impact on power generation. Further, it states that the

¹³ Woodland Pulp LLC January 6, 2015 Comments at 3.

requirement will conflict with the IJC's balancing of boundary water uses. In addition, Woodland Pulp states that limiting impoundment level fluctuations to a 6-inch increase may be operationally impossible during periods of high flows.¹⁴

21. We deny rehearing on this issue. Article 404(c) was based on a recommendation submitted by Interior pursuant to section 10(j) of the FPA, which requires the Commission to incorporate such recommendations into the license unless the Commission can show that the recommendation is inconsistent with applicable law, which we cannot. Commission staff found in the draft and final EA that Interior's recommendation was consistent with the recommendations in the FWS Study and that it would protect loons and minimize the likelihood of flooding nests.¹⁵ Contrary to Woodland Pulp's assertions, Commission staff appropriately relied on the general findings in the FWS Study. The Commission is not required to have perfect information before it acts, but must only provide sufficient evidence to support the reasonableness of its recommendations.¹⁶

22. Woodland Pulp previously asserted, and Commission staff considered in the final EA, that common loons are successfully nesting in the project area and that it may not be able to control impoundment fluctuations during high inflows.¹⁷ Although pre-licensing studies showed that loons were successfully breeding in the project area, because some nest failure may be related to the stability of impoundment levels during the nesting season, Commission staff required Article 404(c) to improve existing nesting conditions

¹⁴ Woodland Pulp does not argue that it may be operationally impossible to limit impoundment fluctuations to a 1-foot decrease, and states that it already limits water level reductions to no more than one foot from June 10 through July 15. *See* Rehearing Request at 5; License Application at B-8.

¹⁵ Final EA at 55-56.

¹⁶ Section 313(b) of the FPA states that "[t]he finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive." 16 U.S.C. § 8251 (2012). Substantial evidence has been defined to mean "such relevant evidence as a reasonable mind might find adequate to support a conclusion." *Allegheny Elect. Coop. v. FERC*, 922 F.2d 73, 80 (2d Cir. 1990).

¹⁷ Final EA at 55.

and promote increased nesting success.¹⁸ If the licensee cannot maintain the surface levels due to emergencies beyond its control, which as discussed below occur only occasionally, the final EA proposed, and Article 404 allows, water surface levels to be temporarily modified.

23. The final EA considered the requirement's effect on the project's economics and power generation. Based on the information provided in the license application, Commission staff assumed no additional cost for this requirement because the requirement would only affect the timing of water level restrictions at the Forest City Project, which does not generate electricity.¹⁹ Commission staff also noted that these restrictions would eliminate Woodland Pulp's ability to adjust the project gates from May 15 through July 16 to benefit generation at Woodland Pulp's downstream unlicensed hydropower facilities.²⁰ Staff nevertheless concluded that the measure should be required, and we agree. Moreover, on rehearing Woodland Pulp does not quantify the measure's impact to downstream generation, nor do we believe that the impact would be significant.

24. While Commission staff did not analyze the labor costs to manually adjust the gates, Woodland Pulp waited until rehearing to provide information on these costs. The information that Woodland Pulp provides on rehearing alone does not provide all the necessary assumptions for Commission staff to estimate labor costs. However, based on the information provided, Commission staff has estimated that it will annually cost Woodland Pulp \$5,820 to limit impoundment fluctuations from May 15 to July 16 to comply with Article 404(c).²¹ Because Woodland Pulp already limits impoundment fluctuations to 1 foot from June 10 to July 15, any additional cost incurred to comply with Article 404(c) should be relatively insignificant. Commission staff estimated that Woodland Pulp's current impoundment operation costs \$3,230 annually. Thus, we conclude that complying with Article 404(c) will cost only \$2,590 annually more than Woodland Pulp's current operation.

¹⁸ *Id.*

¹⁹ Final EA at 107.

²⁰ *Id.*

²¹ Commission staff used two assumptions to estimate labor costs: (1) Woodland Pulp would have to adjust the gates once per week; and (2) the cost of fuel and transportation is \$0.50 per mile.

25. Moreover, historic records from a gage located on the impoundment and maintained by Environment and Climate Change Canada (Environment Canada) indicate that impoundment fluctuations currently do not typically exceed a 6-inch increase or 1-foot decrease the majority of the time. For example, from 1985 to 2014, impoundment level fluctuations exceeded a 6-inch increase for more than one day from May 15 to July 16 on only nine separate occasions, amounting to approximately 8 percent of the time. Over the same period, the impoundment fluctuated below a 1-foot decrease from May 15 to June 9 on only one occasion in 2000, and as mentioned above, the licensee already limits impoundment drawdowns to 1 foot from June 10 to July 15.²²

26. In any event, the cost to limit impoundment fluctuations would not necessarily change Commission staff's decision to require Article 404(c). We may require a measure regardless of the cost if we conclude that the measure serves an important purpose. Here, we find that the measure is reasonable and the cost is not excessive in light of the benefits to wildlife resources.

27. Regarding balancing of boundary water user needs, Woodland Pulp does not identify any specific use that might be negatively affected by Article 404(c). Even so, Commission staff considered multiple resources in the project area without finding any conflicts between the proposed measures and current uses,²³ and no other boundary water user requested rehearing of the license order.²⁴ Accordingly, we conclude that Article 404(c) is supported by substantial evidence and is consistent with the requirements of sections 4(e) and 10(j) of the FPA.

C. License Article 404(e)

28. Article 404(e) requires the licensee to:

maintain the impoundment above elevation of 431.94 feet msl
from June 1 to September 10 to support recreation access in
the impoundment.

²² Government of Canada, Wateroffice, Daily Water Level Data for Grand Lake at Forest City,
http://wateroffice.ec.gc.ca/report/report_e.html?stn=01AR009&mode=Table&type=h2oArc&dataType=Daily&year=1999&y1Max=1&y1Min=1.

²³ Final EA at 72.

²⁴ We also question how Woodland Pulp would be harmed by its project's potential conflict with other water usages and whether Woodland Pulp has standing to raise such issue.

29. Woodland Pulp argues that the record does not support Article 404(e), and therefore, the article should be removed from the license. Woodland Pulp states that a lower minimum lake elevation would provide adequate recreation and that many summertime lake users may prefer lower lake levels to maximize beach access. Woodland Pulp adds that it may be unable to maintain the minimum impoundment elevation during periods of low inflow. Further, Woodland Pulp alleges that the Commission did not analyze the cost to comply with this requirement or its effect on water balance and power generation. Woodland Pulp also asserts that requiring the minimum summertime impoundment elevation, discourages it from cooperating with agencies and property owners on operating the project to balance resources and water uses.

30. We deny rehearing as to Article 404(e). Woodland Pulp provided little information on the minimum impoundment elevation for recreation during the relicensing proceeding. The licensee's application stated that 431.94 feet msl is the preferred minimum level for the project's current operation.²⁵ Further, the licensee's application proposed to continue current project operation, which the license application described as including the minimum summer impoundment elevation of 431.94 feet msl. Based on the information available, Commission staff in the draft and final EA analyzed the minimum summer recreation impoundment elevation, including its cost,²⁶ and recommended its adoption. Neither Woodland Pulp nor any other party or commenter identified a lower minimum impoundment elevation that would provide adequate summer recreation. Further, Woodland Pulp provided no information documenting that low inflows would inhibit its ability to maintain the minimum impoundment level, and continues to provide no information in support of its allegations on rehearing.

31. To determine the legitimacy of Woodland Pulp's claim that it may be unable to comply with Article 404(e), Commission staff reviewed historic records from the gage maintained by Environment Canada. Commission staff found that the historic record demonstrates that over the past 30 years (1985 to 2014) the licensee has maintained an impoundment level at or above 431.94 feet msl from June 1 to September 10 approximately 95 percent of the time. The 5 percent of the time when the licensee did not maintain the impoundment level occurred predominantly at the end of the recreational season in September, which was likely due to low inflows that are typical at that time of

²⁵ License Application at B-8 and B-14, Table B-2.

²⁶ The final EA assumed no additional cost because the measure is consistent with the existing project operation. *See* final EA at 107. For the same reason, we assume that there is no additional impact on power generation.

the year.²⁷ Because Article 406(b) allows Woodland Pulp to identify criteria or environmental indicators that would warrant an adjustment to the start or end dates, Woodland Pulp should be able to avoid noncompliance events. Further, Article 404 allows water surface levels to be temporarily modified, if agreed to by the consulting agencies.

32. Again, we find no basis for giving Woodland Pulp blanket authority to voluntarily operate the impoundment, without specific license requirements. The Commission is bound by statutory obligations under the FPA to determine what conditions are needed to protect all aspects of the public interest at each licensed project. We conclude that Article 404(e) is supported by substantial evidence and is consistent with the requirements of sections 4(e) and 10(a)(1) of the FPA.

D. License Articles 405 and 406

33. Woodland Pulp requests that the Commission remove two license articles that require plans related to project operation: Articles 405 and 406. Article 405 requires Woodland Pulp to prepare an Operation Compliance Monitoring Plan and Article 406 requires Woodland Pulp to prepare an Impoundment Operation Consultation Plan. Commission staff recommended both plans in the draft and final EA, which Woodland Pulp failed to comment on.

34. Woodland Pulp states that these plan requirements impose unnecessary, administrative burdens that duplicate IJC oversight, and costs that cannot be justified given the project's economics. Further, Woodland Pulp asserts that pursuant to these requirements, it must consult with agencies and entities not historically involved or interested in the project. Such consultation, Woodland Pulp argues, reduces cooperation and flexibility to operate the project.

35. We deny rehearing on this issue and find that Articles 405 and 406 are reasonable and appropriate. Article 405 provides a mechanism for Commission staff and resource agencies to monitor compliance with the license's operational requirements. The monitoring of minimum flow requirements is one of the most basic elements of hydropower regulation.²⁸ A detailed description of the equipment and procedures

²⁷ Government of Canada, Wateroffice, Daily Water Level Data for Grand Lake at Forest City, http://wateroffice.ec.gc.ca/report/report_e.html?stn=01AR009&mode=Table&type=h2oArc&dataType=Daily&year=1999&y1Max=1&y1Min=1.

²⁸ Section 31 of the FPA authorizes the Commission to monitor and investigate compliance with each license issued under Part I of the FPA. 16 U.S.C. § 823b(a) (2012).

necessary to monitor and report compliance can prevent misunderstandings related to a licensee's compliance with the project's operational requirements and reduces the likelihood that complaints regarding project operation will be filed with the Commission. The fact that the license includes some of the same requirements as the IJC Order does not affect our ability to require those conditions or to monitor a licensee's compliance with them. "IJC approval is additional to, and does not replace," any of our authorizations required for project works located in the United States.²⁹

36. Article 406 offers the licensee the flexibility to design a process with the agencies for adjusting the annual start and end dates set forth in paragraphs (c), (d), and (e) of Article 404, which require the licensee to maintain certain impoundment levels to protect and enhance fish, wildlife, and recreational resources. Droughts, floods, extreme temperatures, and other short-term changes in environmental conditions may shift the timing of resource activities (e.g., smallmouth bass spawning) protected by Article 404. To account for such shifts, Article 406 allows the licensee and agencies to identify criteria and environmental indicators to anticipate short-term environmental changes and adjust the start and end dates of impoundment requirements in Article 404 accordingly.

37. In addition, we disagree with Woodland Pulp's contention that Articles 405 and 406 involve agencies that are uninterested in the project. Both articles require consultation with Fisheries and Oceans Canada, the IJC, Maine Department of Environmental Protection, Maine DIFW, and Interior, all of which have jurisdiction over resources potentially affected by the project. Woodland Pulp provides no evidence to support the notion that it is overly burdensome for it to engage in post-license consultation, something that we routinely require of licensees. Further, as we have discussed above, there is no merit to Woodland Pulp's suggestion that these otherwise reasonable conditions are unreasonable simply because they may be costly.

E. License Article 410

38. Woodland Pulp requests that the Commission remove Article 410, which requires the licensee to file a Historic Properties Management Plan (HPMP) for Commission approval within one year of license issuance. Article 410 requires the HPMP to include monitoring of six identified archeological sites; procedures for addressing any unidentified cultural resources that may be discovered during the course of constructing, maintaining, or developing project works; and procedures for consulting with the Maine

²⁹ International Joint Commission, Guidance in Seeking Approval for Uses, Obstructions, or Diversions of Waters Under the Boundary Waters Treaty of 1909 at 3 (2012), http://www.ijc.org/files/tinymce/uploaded/Guidance-in-Seeking-Approval-for-Uses_EN.pdf.

State Historic Preservation Officer and the Passamaquoddy Tribe Tribal Historic Preservation Officer on effects of any project-related activities that do not require Commission approval.

39. Woodland Pulp argues that while its predecessor, Domtar Maine Corporation, proposed to prepare an HPMP, recent information demonstrates that the cost to prepare a HPMP is excessive and unnecessary. Woodland Pulp argues that the project has been in place for more than 150 years and is operationally stable. Woodland Pulp adds there is no evidence the six sites may be adversely impacted by project operation, and that the requirement to protect any unknown cultural resources that are discovered during the license term is speculative.

40. We deny rehearing on this issue. Woodland Pulp's predecessor proposed to prepare an HPMP. Woodland Pulp failed to amend the license application after it accepted the license in 2009; failed to comment on Maine DEP's recommendation to prepare an HPMP filed on August 26, 2013; and failed to comment on the draft or final EA – both of which recommended an HPMP and estimated its cost.

41. While it is unlikely that operation of the project will have an adverse effect on historic properties located within the project boundary, there is still the potential for future modifications or activities to affect existing archeological sites or cultural resources that may be discovered during the license term. The requirement to prepare an HPMP is standard Commission practice designed to protect historic properties from the adverse effect of such future, unknown project undertakings, and ensures that appropriate consultation occurs before any future activity may affect those historic properties. The fact that Woodland Pulp will have to expend resources to prepare and implement an HPMP does not make this condition unreasonable.

IV. Conclusion

42. In sum, we find that the new license includes conditions that are reasonable and not excessive in light of their benefits to flood control and to wildlife, recreation, and cultural resources. Whether to accept the license under the conditions we require is for the licensee to decide.³⁰ For the reasons discussed above, we deny Woodland Pulp's request for rehearing.

³⁰ See *City of Tacoma, Washington v. FERC*, 460 F.3d 53, 71-74 (D.C. Cir. 2006). See also *Mead Corp.*, 72 FERC ¶ 61,027, at 61,071 n.20 (1995).

The Commission orders:

The request for rehearing filed on December 22, 2015, by Woodland Pulp LLC is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.